

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Gerl, Josef  
Application Number: 10/733911  
Filing Date: 12/10/2003  
Title: Cooking Appliance With An Extractor Fan

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RECEIVED**

**MAR 20 2006**

ATTENTION: FRANCES HICKS

**OFFICE OF PETITIONS**

**PETITION UNDER 37CFR §1.183 FOR THE DIRECTOR  
TO SUSPEND OR WAIVE THE REGULATIONS REGARDING PROPER CLAIMING  
OF PRIORITY OR IN THE ALTERNATIVE TO GRANT AND CHARGE A SINGLE  
FEE REQUIRED FOR SUCH GRANT OF PRIORITY**

Sir:

This is a Petition under 37 CFR §1.183 for the Director to suspend the requirements of 37 CFR §1.78 as it relates to the surcharge under 37 CFR §1.17(t) to perfect Applicant's claim for priority.

As discussed with Ms. Hicks, this petition is being filed herein and in each of the accompanying fifty applications listed on the attached Appendix (The Appendix is identical in each application, so there are actually fifty-one listed applications, including in each case the application in which the petition is filed). As explained to Ms. Hicks, each of the fifty-one applications was filed with the same error in claiming the priority. Applicants believe that this was a single error by the undersigned in the filing and Applicants should not be penalized over \$72,000 (\$1,370 fee) or over \$20,000 (\$400 fee) for the same error just repeated fifty-one times by the undersigned operating essentially as a sole practitioner for the filing of the fifty-one applications. The situation is the same in each application as explained in detail below with respect to this application.

More specifically, this application was filed as the national phase of an international application designating the United States. The assignee originally filed the application in Germany and then, through the PCT, filed this application through the US office here in North Carolina by the undersigned. An Application Data Sheet was originally submitted with the application claiming priority to both the originally filed German application upon which the International Application was based, and to the PCT International Application. The Application Data Sheet specifically identified the International Application. Further, the Transmittal Letter to the United States Designated/Elected office under 37 CFR §371 also specifically designated the international application number and claimed priority to the filing date of the International Application, which in turn claimed priority properly to the originally filed German application.

The only error in the original submission was that the International Application was indicated to be a foreign priority claim, as opposed to a domestic priority claim.

**Applicants state that this error and the entire delay between the date the claim was due under 37 CFR §1.78(a)(2)(ii) and the date the claim was filed was unintentional and solely due to a single error by the undersigned.** This is self-evident from a reading of the Application Data Sheet as well as from the File Wrapper documents themselves which show that Applicants made a good faith effort to claim priority, but made a simple error in designating the type of priority claimed.

This single error arose in this and the other fifty applications filed on behalf of the Assignee in this application. The error in this application, and the other applications, shown listed on Appendix A hereto, arose out of a single commonly repeated error over the course of filing these applications by the undersigned over almost two years.

It is only after the first several Office Actions were received in connection with this application, as well as in several of the other applications, that the error became apparent. To require payment of the \$1,370 fee in this application and all of the other applications in which the error arose out of the single common mistake would work a tremendous financial injustice on the Assignee in this, and the other applications. As it is, a substantial financial burden will still be imposed upon the Assignee because a separate Petition under 37 CFR §1.183 for each application will still require a \$400 petition fee.

It is again pointed out that the error in all the applications arose out of a common single mistake by the undersigned, which was not noticed until a first Office Action was issued well after the time period during which the mistake could have been corrected. The claim for

priority and the relationship between the applications were also reflected in the Transmittal Letter concerning a submission under 37 CFR §371. In that Transmittal Letter the prior international application was clearly identified as well as in the Application Data Sheet originally submitted with each application. As stated, the only error was that the International Application was erroneously identified as being an application giving rise to a foreign priority claim. A copy of the published International Application was also attached at filing.

The burden of multiple \$1,370 petition fees may cause the Assignee to forfeit rights in inventions due to the huge cost burden imposed of over \$72,000. This would result in a great injustice. Even with the \$400 petition fee required under 37 CFR §1.183, there will still be a substantial financial burden imposed of over \$20,000.

It should be noted that petitions previously have been filed in three of the fifty-one applications listed in the Appendix, along with the appropriate petition fees in each of these case:

- In two of the applications, Serial No. 10/441,653 filed 05/19/2003 and Serial No. 10/771,659 filed 02/04/2004, individual petitions were both filed on 11/22/2005, each with the payment of the \$1,370 petition fee. These two petitions were filed because the applications were in the issue process. This petition also requests that such fees be refunded for the same reasons. No petition decision has yet been rendered for these two applications. But, the \$1,370 petition fee has been charged to Assignee's Deposit Account in both applications.
- In one of the applications, Serial No. 10/445,704 filed 05/27/2003, the petition has been dismissed. But, the \$1,370 petition fee also has been charged to Assignee's Deposit Account.

Thus, it is respectfully urged that, in the interest of justice, the \$1,370 petition fee that has been paid in each of the three above noted applications be refunded to the Assignee's Deposit Account No. 502786.

Finally, one may argue that the rules provide a remedy under 37 CFR 1.78 and that a Petition under 37 CFR §1.183 is not necessary or appropriate. However, this ignores the fact the large fee required under 37 CFR §1.78 is generally reflective of a penalty for an error in one application. It is respectfully urged that 37 CFR §1.78 is not intended to exact a penalty of the magnitude described herein for a simple error repeated in multiple applications. Even with the granting of this Petition, the Applicants/Assignee still faces a tremendous cost of \$400 per

application in a total of fifty-one applications. It is thus respectfully urged that justice demands the granting of this petition in this, and in each of the other of Applicants'/Assignee's applications in which a similar Petition is being filed together herewith.

The Director is thus requested to grant this Petition and each respective similar Petition filed with respect to the other similarly situated applications in the Appendix attached hereto.

It is again also affirmatively stated herein that the entire delay between the date the claim was due under 37 CFR §1.78(a)(2)(ii) and the date the claim was filed was unintentional. Further, to properly establish Applicants' claim for priority, a Supplemental Application Data Sheet is being submitted herewith and it is respectfully urged that the Director approve entry of the Supplemental Application Data Sheet, and that the claim for priority, both domestically and internationally, be granted.

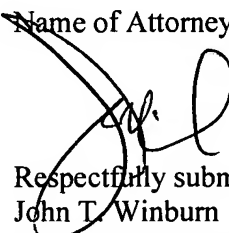
In the alternative, should the Director determine that a fee is required with respect to this petition, the Director is hereby authorized to charge Deposit Account 502786 for any deficiency in this and each of the other applications. Applicants believe, since a single error was committed, that any fee charged should be only charged once in the amount of \$400 or \$1,370, as the Director determines. In the event the Director determines that such a fee is required with respect to this petition, it is respectfully urged that the fee be deducted from the previously requested refund as detailed on Page 3 of this petition.

Should the Director have any questions or require additional submissions to support this Petition and its granting, the Director is courteously requested to contact the undersigned at the number listed below.

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John T. Winburn

~~Name of Attorney Signing~~

  
Respectfully submitted  
John T. Winburn  
Registration No. 26,822  
March 17, 2006

**APPENDIX**

	Internal file reference	US Filing Date	Application number	Title	Inventor
1	2000P12017WOUS	04/24/2003	10/422224	ELECTRIC HEATING BODY	Mücke, Wolfgang; Peters, Bert
2	2000P12022WOUS	04/24/2003	10/422436	PORTHOLE DOOR FOR A FRONT-LOADING DRUM WASHING MACHINE	Geyer, Johannes; Held, Wolfgang; Kluge, Wilfried
3	2000P12028WOUS	04/24/2003	10/422210	METHOD FOR MECHANICAL CLEANING OF TEXTILES OR SOLID OBJECTS	Classen, Egbert
4	2000P12050WOUS	05/19/2003	10/441653	METHOD AND DEVICE FOR IRONING GARMENTS	Damrath, Joachim; Hafer, Christian; Knispel, Kristina; Redlin, Kathrin; Siegele, Sebastian; Spielmannleitner, Markus; Urich, Bodo; Wetzl, Gerhard
5	2000P13008WOUS	04/24/2003	10/422211	METHOD AND DEVICE FOR DETERMINING THE DEPOSITS OF COMPONENTS FROM A LIQUID ON SURFACES, IN PARTICULAR LIQUID PUMPING MACHINES	Eiermann, Rüdiger
6	2000P13013WOUS	06/12/2003	10/459736	SYSTEM FOR DAMPING VIBRATIONS COMING FROM A MOTOR	Groll, Hubert; Hansson, Torbjörn; Rosenbauer, Michael; Schmidt, Herbert
7	2000P13023WOUS	05/13/2003	10/437548	Insert for a Dish Basket for An Automatic Dishwasher	Deiss, Ulrich; Fetzer, Gerhard; Heißler, Heinz; Rosenbauer, Michael
8	2000P13024WOUS	05/13/2003	10/437550	ARRANGEMENT FOR IMPROVING THE DRYING PERFORMANCE OF AN AUTOMATIC DISHWASHER	Deiss, Ulrich; Fetzer, Gerhard; Heißler, Heinz; Rosenbauer, Michael
9	2000P13026WOUS	06/25/2003	10/603531	FILTER	Jerg, Helmut
10	2000P13027WOUS	06/25/2003	10/603758	FILTER	Jerg, Helmut
11	2000P13034WOUS	06/25/2003	10/606008	DISHWASHER	Jerg, Helmut; Rosenbauer, Michael; Schessl, Bernd
12	2000P13035WOUS	06/25/2003	10/603759	WASHING CONTAINER FOR A DISH-WASHING MACHINE	Jerg, Helmut; Rosenbauer, Michael; Schessl, Bernd; Stickel, Ernst

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Attorney Docket No.: 2001P16019WOUS

13	2000P13038US01	10/26/2005	11/259579	METHOD FOR OPERATING A DISH WASHING MACHINE, AND A CORRESPONDING DISH WASHING MACHINE	Jerg, Helmut; Rosenbauer, Michael; Schessl, Bernd
14	2000P14032WOUS	06/12/2003	10/460441	SOLENOID VALVE FOR A COOLANT CIRCUIT	Kordon, Rolf
15	2000P16024WOUS	04/14/2003	10/413018	Cooking Device Door	Lebacher, Rainer; Roch, Klemens; Schnell, Wolfgang; Thaller, Christine; Wagner, Michael; Wilsdorf, Gerd
16	2000P16027WOUS	05/29/2003	10/449560	HIGH-LEVEL BUILT-IN OVEN UNIT	Bally, Ingo; Dengler, Klaus; Fleissner, Reinhard; Gerl, Josef; Hangl, Felix; Herbst, Johann; Hopfenmüller, Bernd; Kuttalek, Edmund; Mallinger, Peter; Rabenstein, Klaus; Roch, Klemens; Schnell, Wolfgang; Unterreiner, Christian; Wagner, Michael; Zimmermann, Christian
17	2000P16034WOUS	05/27/2003	10/445704	OVEN	Hasslberger, Robert; Lappat, Hans; Lebacher, Rainer; Lohner, Peter; Rabenstein, Klaus; Roch, Klemens; Schnell, Wolfgang; Thaller, Christine; Wagner, Michael
18	2001P11001WOUS	02/09/2004	10/774875	Electrical Plug Connector	Müller, Bernd
19	2001P12008WOUS	01/16/2004	10/758872	Process For Operating A Water-bearing Domestic Appliance And Domestic Appliance	Czyzewski, Gundula; Wöbkemeier, Martina
20	2001P13002WOUS	12/18/2003	10/739251	METHOD FOR CHECKING ELECTRICAL SAFETY OF A HOUSEHOLD APPLIANCE AND CORRESPONDING HOUSEHOLD APPLIANCE	Hering, Reinhard; Reiter, Bruno; Rosenbauer, Michael; Rothauszky, Christian
21	2001P13005WOUS	10/23/2003	10/692160	Device For Adjusting The Height Position Of A Dishware Basket Which Can Be Pulled Out From The Rinsing Container Of A Dishwasher	Deiss, Ulrich; Schessl, Bernd; Schütz, Rainer

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22	2001P13009WOUS	12/10/2003	10/734054	Fire Protection Device For Domestic Appliances	Jerg, Helmut; Staedel, Stefan A.
23	2001P13010WOUS	12/18/2003	10/739625	FIRE PROTECTION DEVICE FOR DOMESTIC APPLIANCE	Jerg, Helmut; Staedel, Stefan A.
24	2001P13011WOUS	12/18/2003	10/740104	FIRE PROTECTION AND FIRE EXTENGUISHING DEVICE FOR DOMESTIC APPLIANCES	Jerg, Helmut
25	2001P13014WOUS	04/28/2004	10/833795	Roller retainer for dishwashers	Bühlmeyer, Alexander; Küçük, Cengiz
26	2001P13016WOUS	05/14/2004	10/845961	Two-Piece Washing Tank For A Dishwasher And A Method For Manufacturing A Two-Piece Washing Tank For Dishwashers	Amann, Klaus; Küçük, Cengiz; Oppel, Anton; Seeßle, Manfred; Stickel, Ernst; Thibaut, Wilhelm
27	2001P13021WOUS	06/21/2004	10/872662	Dishwasher	Eiermann, Rüdiger
28	2001P13022WOUS	06/21/2004	10/872599	Device For Controlling The Washing Process For Items To Be Washed In A Dishwasher	Jerg, Helmut; Rosenbauer, Michael; Schessl, Bernd
29	2001P13025WOUS	06/28/2004	10/879929	Device And Method For Collecting Wastewater in Dishwashers	Giefer, Heinz-Werner; Hechtl, Georg; Nannt, Hans-Peter; Sipple, Horst
30	2001P13027WOUS	06/28/2004	10/879928	Cutlery Basket For A Dishwasher	Kaczmarek, Wolfgang
31	2001P14024WOUS	02/09/2004	10/774984	Refrigeration Device And Operating Method For A Refrigeration Device	Becker, Wolfgang; Maier, Roland; Nuiding, Wolfgang
32	2001P14029WOUS	02/09/2004	10/774979	Combination Refrigerating Appliance and Evaporators For The Same	Nuiding, Wolfgang
33	2001P14034WOUS	02/27/2004	10/788569	REFRIGERATING APPLIANCE	Brachert, Rainer; Mayershofer, Christian; Reiter, Andreas; Schmidt, Rudolf; Stempfle, Anton
34	2001P15108WOUS	12/18/2003	10/739359	Device For Storing A Cable	Hamm, Silvio; Prell, Manfred
35	2001P15109WOUS	12/18/2003	10/739250	Cable-Pull Opening	Bott, Erich; Kemmerzell, Wolfgang



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36	2001P15111WOUS	12/18/2003	10/740090	Vacuum Cleaner	Bott, Erich; Kemmerzell, Wolfgang
37	2001P15152WOUS	02/04/2004	10/771659	Fruit Press	Areh, Marko; Brezovnik, Peter; Mazej, Stanislav; Pavlovic, Henrik; Steffl, Michael; Zibret, Igor
38	2001P16014WOUS	11/07/2003	10/703238	METHOD AND DEVICE FOR LIMITING AND/OR CONTROLLING THE SURFACE TEMPERATURE OF A HOB	Blumenthal, Peter; Fuchs, Franz; Garcia, Jose-Andres; Huber, Johann; Marbach, Andreas; Neumayer, Dan; Ramones, Tonoha; Schweidler, Ernst; Steiner, Herbert; Stitzl, Bernd; Zeraschi, Monika; Zschau, Günter
39	2001P16019WOUS	12/10/2003	10/733911	Cooking Appliance With An Extractor Fan	Gerl, Josef
40	2001P16029WOUS	02/04/2004	10/771660	Domestic Appliance	Lappat, Hans; Uglorz, Helmut; Ulmer, Michael; Wilsdorf, Gerd
41	2001P16031WOUS	02/04/2004	10/771923	Cooking Device	Wilsdorf, Gerd
42	2001P16038WOUS	04/14/2004	10/824233	CATALYTIC COATING FOR THE SELF-CLEANING OF OVENS AND STOVES	Jördens, Frank; Salomon, Jürgen; Schmidmayer, Gerhard; Walter, Bernhard
43	2001P16046WOUS	05/18/2004	10/848609	Electric Domestic Appliance	Calis, Ursula; Garcia Jiménez, Jose Ramon; Lieb, Thomas; Seehuber, Hans; Stitzl, Bernd
44	2001P16047WOUS	05/18/2004	10/848194	Door Sealing Strip And Cooking Device	Gassner, Christian; Hasslberger, Robert; Wagner, Michael
45	2001P16124WOUS	04/21/2004	10/828674	COOKING DEVICE WITH HIGH-SPEED HEATING	Gramlich, Walter; Götz, Bernhard; Krüger, Werner
46	2001P16127WOUS	04/22/2004	10/829753	Lighting Device for Baking Oven	Gramlich, Walter; Götz, Bernhard
47	2001P16133WOUS	06/21/2004	10/872885	Extraction System for a Domestic Appliance, especially a Cooking Device	Erdmann, Klaus; Wiedenmann, Reinhard
48	2001P16159WOUS	02/04/2004	10/771670	FILTER DEVICE FOR AN EXHAUSTER HOOD	Rosmann, Dieter; Rückert, Wilfried; Schmid, Dietrich
49	2001P18006WOUS	02/09/2004	10/774978	Linen Treatment Device With Imbalance Monitoring, Level Monitoring, or Load Monitoring	Lorenz, Tilmann; Reitmeier, Willibald
50	2002P00073WOUS	07/23/2004	10/898599	Baking Oven	Has, Uwe; Lappat, Hans; Uglorz, Helmut; Ulmer, Michael

51	2002P00604WOUS	12/08/2004	11/007027	INDUCTION HOT PLATE COMPRISING HEATING REGIONS HAVING A RECONFIGURABLE STRUCTURE, AND METHOD FOR INCREASING THE MAXIMUM POWER OF SAID HEATING REGIONS	Esteras Duce, Ignacio; Monterde Aznar, Fernando; Rivera Pemán, Julio
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